No. 84-461

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In The

Supreme Court of the United States

October Term, 1984

PISCATAWAY TOWNSHIP BOARD OF EDUCATION,

Petitioner,

vs.

T.G. and P.G., Individually and on behalf of their infant child, D.G., COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTIONS PRESENTED

1. Is psychotherapy a "related service" under the Education for All Handicapped Children, 20 U.S.C. §1401, *et seq.*?

2. Should this case be remanded to the District Court for further proceedings in light of *Irving Independent School Dist. v. Tatro*?

3. Is petitioner Board of Education entitled to a remand on the factual issue of the parties' understanding concerning payment for psychotherapy?

LIST OF PARTIES

1. T.G. and P.G., individually and on behalf of their infant child, D.G.

2. Board of Education of the Township of Piscataway, New Jersey.

3. Community Mental Health Center of Rutgers Medical School, College of Medicine and Dentistry of New Jersey.

4. Prudential Insurance Company of America.

5. Blue Cross-Blue Shield of New Jersey

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Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CITATION OF OPINIONS BELOW

1. *T.G. v. Bd. of Education of Piscataway,* 576 F. Supp. 420 (D.N.J. 1983) (4a).[1]

1. References to the appendix are designated "(a)".

2. *T.G. et als v. Board of Education of Piscataway, et als,* United States Court of Appeals for the Third Circuit, No. 83-5889 (1a).

JURISDICTIONAL GROUNDS

Petitioner seeks review of a final judgment of the United States Court of Appeals for the Third Circuit, dated June 21, 1984 affirming an order of the United States District Court for the District of New Jersey, dated November 15, 1983 (15a) [Opinion published at 576 F. Supp. 420 (D.N.J. 1983).] Jurisdiction is conferred on this Court by 28 U.S.C. §1254(1).

STATUTORY AND REGULATORY PROVISIONS AT ISSUE

1. 20 U.S.C. §1401(17):

> The term "related services" means transportation, and such developmental, corrective and other supporting services including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling service, except that such medical services shall be for diagnostic and evaluative purposes only as may be required to assist a handicapped child to benefit from special education. . . .

2. 34 C.F.R. §300.13(b)(8):

> ["Psychological services" includes:]
>
> * * *

(V) planning and managing a program of psychological services, including psychological counseling for children and parents.

3. 34 C.F.R. §300.13(b)(2):

"Counseling services" means services provided by qualified social workers, psychologists, guidance counselor, or other qualified personnel.

4. 34 C.F.R. §300.13(b)(24):

"Medical services" means services provided by a licensed physician to determine a child's medically handicapping condition which results in the child's need for special education and related services.

STATEMENT OF THE CASE

This case arises under the Education for All Handicapped Children Act, 20 U.S.C. §1401, *et seq.* ("the Act"). Petitioner, Board of Education of the Township of Piscataway, New Jersey (Board), seeks review of a June 21, 1984 decision of the Court of Appeals for the Third Circuit that psychotherapy in the form administered to a handicapped child in this case, at a hospital day placement out of the district, was a "related service" under the Act, for which the Board was financially responsible. Petitioner further challenges the Court of Appeals' affirmance of the District Court's grant of summary judgment to respondents, despite the presence of genuine issues of material fact warranting a plenary hearing.

Plaintiff D.G. is an eleven year old boy classified by the child study team of the Board of Education of Piscataway as

"emotionally disturbed." It was agreed between the Board and D.G.'s parents, T.G. and P.G., that the child would be placed in the Child Day Hospital of the Community Health Center of Rutgers Medical School in Piscataway for the 1980-1981 school year. An individualized educational plan ("IEP") was developed by the child study team and the parents and served as the prescription of D.G.'s education program in that placement (18a). Nowhere did the IEP specify psychotherapy or any other "psychological services" as a required component of the educational plan. D.G.'s placement at Child Day Hospital continued through January 1983, when he returned to his neighborhood school in the district.

Notwithstanding the absence of psychotherapy as a specified "related service" in the IEP, psychotherapy was administered to the child throughout his stay at Child Day Hospital. In 1982, the parents demanded that the Board reimburse them for the cost of this service, which had been charged out at the rate of $45 per session. The Board declined for three reasons. First, psychotherapy was not part of what the IEP agreed to between the Board and the parents (18a, 24a). Secondly, the New Jersey Department of Education had issued a policy statement to the effect that "psychotherapy", other than that necessary for diagnostic and evaluative purposes, was not a "related service" for which a local school district would be responsible (39a). Finally, the Board took the position that nothing in the Act or regulations promulgated thereunder required it to pay for this service.

The child's parents commenced this action on November 22, 1982, in the United States District Court for the District of New Jersey, essentially seeking to shift the financial burden of the psychotherapy to the Board. Community Mental Health Center of Rutgers Medical School, College of Medicine and Dentistry of New Jersey, impleaded Prudential Insurance Company of America and Blue Cross-Blue Shield of New Jersey, the parents'

insurance carriers, alleging that they may be responsible in whole or in part for the outstanding charges due for services rendered.

On October 11, 1983, Honorable Harold A. Ackerman, District Court Judge, rendered a bench opinion granting summary judgment in favor of the parents holding the Board responsible for the cost of psychotherapy at the Rutgers Medical School (3(4a). The Board appealed Judge Ackerman's decision to the United States Court of Appeals for the Third Circuit, which affirmed, based on "the reasons set forth in the district court bench opinion. . .," on June 21, 1984 (2a).

REASONS FOR GRANTING THE WRIT

I.

Psychotherapy is not a "related service" under the Act.

States receiving funds under the Act must implement a policy "that assures all handicapped children the right to a free appropriate education," 20 U.S.C. §1412(1), defined as "special education and *related services*." §1401(18). (Emphasis added.) "Related services" includes:

> . . .transportation and such developmental, corrective and other supportive services as are required to assist a handicapped child to benefit from special education, and includes . . . *psychological services,* physical and occupational therapy, recreation, early identification and assessment of disabilities in children, *counseling services* and *medical services for diagnostic or evaluation purposes*. . . . [Emphasis added.] [20 U.S.C. §1401(1).]

See generally, Annotation, *What Services Must Federally Assisted Schools Provide For Handicapped Children Under Education of the Handicapped Act,* 63 A.L.R. Fed. 856. The principle issue in this case is whether psychotherapy administered to an emotionally disturbed child at a psychiatric hospital day placement is a "medical service", 34 C.F.R. §300.13(b)(4), for which the school district is not financially responsible, or a "psychological service," 34 C.F.R. §300.13(b)(8), or "counseling service" 34 C.F.R. §300.13(b)(2), which are included as "related services." This Court should be mindful that the scope of the "medical services" exclusion from "related services" was addressed for the first time in *Irving Independent School Dist. v. Tatro,* 468 U.S. ____, 104 S. Ct. ____, 82 L. Ed. 2d 664 (July 5, 1984), decided approximately two weeks after the Court of Appeals decision sought to be reviewed herein.

Only three other published decisions have considered whether psychotherapy is a "related service." *Papacoda v. State of Connecticut,* 528 F. Supp. 68 (D. Conn. 1981); *In the Matter of the "A" Family,* 184 Mont. 145, 602 P. 2d 157 (Mont. 1979); *Darlene L. v. Illinois State Bd. of Educ.,* 568 F. Supp. 1340 (N.D. Ill. E.D. 1983). *Papacoda* and *"A"* found in favor of inclusion, but both were decided prior to this Court's decision in *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982).[2] *Darlene L.,* decided post-*Rowley,* found such therapy not included where administered by licensed physicians.

The Act plainly excludes "medical services" from the definition of "related services", except when provided for evaluative or diagnostic purposes. 20 U.S.C. §1401(17). At the

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2. The District Court in *Papacoda* cited as authority the opinion of the Second Circuit Court of Appeals in *Rowley,* 632 F.2d 945 (2d Cir. 1980) which was subsequently reversed by this Court.

same time, "psychological services", which encompass "psychological counseling for children and parents", are included, *id.*, 34 C.F.R. §300.13(b)(8), as are "counseling services", meaning "services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel." 34 C.F.R. §300.13(b)(2). In *Papacoda, "A"* and the present case, psychotherapy was found to constitute "psychological services", "counseling services", or both, and therefore included as a "related service" despite the exclusion for non-diagnostic "medical services ".

In *Darlene L.*, the District Court addressed the same issue in light of *Rowley:*

> [U]nder the express language of §1401(17), the defendant state agencies have properly deemed psychiatric services to be medical services since they are provided by licensed physicians. As medical services, they need be provided under the Act by the state only to the extent they are for evaluative and diagnostic purposes. This decision conforms to the clear Congressional intent that the EHA is for educational purposes, not medical treatment.
>
> This interpretation of §1401(17) is also mandated by two recent Supreme Court decisions, in *Pennhurst v. Halderman,* 451 U.S. 1, 101 S. Ct. 1531, 67 L. Ed. 2d 694 (1981), and *Board of Education v. Rowley* ____ U.S. ____, 102 S. Ct. 3034, 3035, 73 L. Ed. 2d 690 (1982). In *Pennhurst,* the Court interpreted the Developmentally Disabled Assistance and Bill of Rights Act ("DDA"), 42 U.S.C. §6000 et seq., an act similar in many respects to the EHA. The Court found that the DDA was merely a funding statute enacted

pursuant to Congress' spending power, creating no substantive rights in individuals. The Court stressed the need for Congress to clearly express all conditions imposed upon states in return for federal funds. The court concluded that states cannot be held to conditions not expressly and unambiguously imposed in the legislation.

In *Board of Education v. Rowley,* supra, the Court made similar observations about the EHA. In finding that the EHA does not require states to maximize the potential of each handicapped child, the court noted that any other view would be "contrary to the fundamental proposition that Congress, when exercising its spending power, can impose no burden upon the states unless it does so unambiguously." 102 S. Ct. at 3042, n.11. The court further stated that it would not ignore the statutory language and legislative intent to find that Congress had imposed upon the states a burden of unspecified proportions, to be revealed only through a case-by-case adjudication in the courts. *Id.* Thus, the court recognized the unfairness of imposing large financial burdens on states on the basis of broad interpretations of ambiguous language in funding statutes like the EHA.

From the decisions in *Rowley* and *Pennhurst,* it is clear that the Courts may not expansively interpret provisions of funding statutes such as the EHA to require states to provide any services which are not explicitly required by the statute. This reasoning compels the court to reject plaintiffs' arguments for an expensive interpretation of §1401(17), and to conclude that states may properly

> consider psychiatric services as medical services and therefore not "related services" which the state must provide as part of a free appropriate education. A contrary ruling in this case would result in imposing a great indeterminate financial burden on the states, and would divert the limited funds available for special education to subsidize the high cost of psychiatric care for a relatively small number of mentally disturbed children, without any indication that Congress intended such a result. [566 F. Supp. at 1344-45.]

The District Court Judge in the present case expressly found *Rowley* irrelevant to the issue before him (576 F. Supp. at 523-24). The Court of Appeals presumably agreed, since its affirmance was based on "the reasons set forth in the district court bench opinion. . . " (2a).

The courts below and counsel did not have the benefit of this Court's decision in *Irving Independent School Dist. v. Tatro,*[3] *supra,* the first case to reach this Court concerning the "medical services" exclusion. There it was held that clean intermittent catheterization ("CIC") was not a "medical service" under 34 C.F.R. §300.13(b)(4), but a "school health service", defined by 34 C.F.R. §300.13(b)(10) to include "services provided by a qualified school nurse or other qualified person", at least when performed by a school nurse or other non-physician. 82 L. Ed. 2d at 673. The following passage from this Court's opinion is particularly instructive here:

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3. *Tatro* was decided July 5, 1984. The decision of the Court of Appeals below was on June 21, 1984.

> Although Congress devoted little discussion to the "medical services" exclusion, the Secretary [of Education] could reasonably have concluded that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence. [82 L. Ed. 2d at 673-74.]

The psychotherapy administered in this case was both "unduly expensive" and beyond the range of "[the school personnel's] competence." The Child Day Hospital's claim for psychotherapy during the child's two and one-half year placement there was roughly $25,000. In answers to interrogatories made part of the record before the District Court on the summary judgment motion, Child Day Hospital provided the following description of its services:

> Child Day Hospital is a specialized treatment program for seriously emotionally impaired children. As such, individual psychotherapy, family therapy and the broad spectrum of milieu therapy are provided on an integrated, intensive basis. Children are accepted for admission who are assessed to be in need of such specialized services to remediate psychiatric problems. They are admitted only with their parents' full knowledge and consent. Educational services are also provided, designed to enhance learning by our patients, in a manner complementary to the treatment program and individual treatment goals. Educational needs are primary neither to the decision to admit nor to discharge a patient. Psychotherapy is a basic part of the treatment program, not of the educational program. Both specialized education, individual and family

psychotherapy, and other therapeutic modalities in combination, comprise the total program. (answer to interrogatory number 2). [34a.]

Psychotherapy refers to either individual child psychotherapy or family psychotherapy provided by a trained mental health clinician. Carol Borowka, MSW, was D.G.'s individual therapist, meeting on a one-to-one basis with him on a scheduled twice weekly basis for 30-45 minutes. This work was supervised by Deborah Matro, M.D., consulting child psychiatrist. Ms. Borowka also provided family therapy on a once weekly, or less frequent, basis, with sessions typically lasting one hour. Nydia G. Preto, MSW, functioned as family therapy supervisor. Clinical responsibility for these psychotherapeutic services resided with Norman Travis, Ph.D., clinical psychologist and Clinical Administrative Coordinator for the Child Day Hospital. (answer to interrogatory number 3). [34a.]

Mental health clinicians administering psychotherapy must meet all of the standard professional criteria prior to being employed by the Communicy Mental Health Center, i.e., Masters Degree or Ph.D. from an accredited graduate school with corresponding supervised practical experience . . . . Physicians participating in the treatment must be board certified or board eligible in their specialty, licensed in the State of New Jersey, full or part-time members of the clinical faculty of the Department of Psychiatry, and extended privileges to practice medicine in the Community Mental Health Center by the Board

> of Trustees of the University of Medicine and Dentistry of New Jersey. (answer to interrogatory number 5) [37a.]

It is clear that the psychiatric services rendered far exceed the type of program which could be administered in a typical public school setting. The cost was not something Congress would have envisioned a public school district undertaking. In *Tatro*, this Court noted that "if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide nursing services to administer it." 82 L. Ed. 2d at 675. Presumably, the same standard would govern psychotherapy too, where, as here, there appears no particular need for its administration during the regular school day.

Tatro recognized that "medical services" provided directly by a licensed physician were not "related services", except where provided for diagnostic or evaluative purposes. There, as in the present case, the day-to-day service was provided by non-physicians under the ultimate supervision and control of a licensed doctor. The District Court, the Court of Appeals and this Court all recognized the problem in determining when the degree of supervision and control by the licensed physician transforms a "school health service" under §300.13(b)(10) into a "medical service" under §300.13(b)(4), *i.e.*, a service "provided by a licensed physician . . ." As the District Court in *Tatro* observed,

> . . . (t)he statute and its implementing regulations suggest that medical services are services that can be provided lawfully only by a licensed physician. But they gave no direct guidance as to precisely what "provided by a licensed physician" [34 C.F.R. §300.13(b)(4)] means. [516 F. Supp. at 975.]

Based upon a detailed examination of the nature of CIC, the role of the physician and school nurse in its implementation and the responsibilities imposed by state law on providers of health care, this Court concluded that CIC was not "provided by a licensed physician", where school authorities were provided with a detailed step-by-step prescription by the physician, leaving no room for exercise of medical discretion. 82 L. Ed. 2d at 675; *see also*, 703 F. 2d at 828-29. The fact that a layperson with minimal training was also competent to perform CIC obviously influenced this Court as well. 82 L. Ed. 2d at 675.

The psychotherapy in the present case was significantly different. Unlike CIC, where the physicians' involvement was limited to writing a detailed set of instructions for the school nurse to follow in the public school setting, the psychotherapy was administered to D.G. at a psychiatric hospital, and bore little similarity to the rote procedure of CIC. It is clear from the Hospital's own description of the program, *supra*, that the professional backgrounds of the non-physicians, and the network of interaction with the psychiatric physicians at the institution, far exceed what one might expect from any public school setting. However attenuated the link between licensed physician and the school personnel may have been in *Tatro*, the same cannot be said of the psychotherapy program at Child Day Hospital. The courts below, albeit without *Tatro* to light the way, improperly expanded the scope of "related services" beyond anything Congress might have intended. The psychotherapy in this case was a "medical service", and this Court should grant certiorari to rectify the errors below.

At the time the District Court considered the parents' summary judgment motion below, this Court had not yet granted certiorari in *Tatro*.[4] In light of the emerging difference of opinion

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4. The District Court's oral opinion was delivered October 11, 1983. Certiorari was granted in *Tatro* on December 5, 1983. 464 U.S. ____, 104 S.Ct. 523, 78 L.Ed. 2d 707 (1983).

among the lower federal courts on the psychotherapy issue, and the guidance provided by *Tatro* as to the factors relevant to an analysis of the "medical services" exclusion, petitioner prays for a remand, at the very least, for making an appropriate record. Such a record would include detailed evidence of the extent of the physicians' involvement in the day-to-day psychotherapy, the necessary qualifications of those performing the service daily, the measure of professional discretion exercised by those non-physicians directly engaged in the therapy, and the manner in which New Jersey allocates legal responsibility for administration of psychotherapy through statutory and administrative law.

In the summary judgment proceedings before the District Court, the parents bore the burden of eliminating any genuine issue of material fact and demonstrating their clear entitlement to judgment on the law. F.R.C.P. 56. The same standard applied before the Court of Appeals. *Goodman v. Mead Johnson & Co.*, 534 F. 2d 566, 573 (3rd Cir. 1976), *cert. denied* 429 U.S. 1038 (1977). The record below, meagre as it was, did not focus on the factors deemed most relevant in *Tatro* in any event. No harm would befall the child by a continuation of this litigation, since his placement at Child Day Hospital ended in January 1983.

II.

The District Court erred in failing to discern genuine issues of material fact concerning the intention of the parties at the time of the original placement.

Judge Ackerman found that psychotherapy was a "related service" under the Act and its implementing regulations. Nowhere in the Court's opinion, however, did it specifically find that psychotherapy was required by the child's IEP. There was no dispute that the Rutgers Medical School, at the time of the original placement, required all students to undergo psychotherapy during

their stay, but the Board submitted a certification, executed by three members of defendant Board's child study team, setting forth the following facts:

> 2. We have been advised by the Board of Education's attorney that the child's parents have stated that the child study team led them to believe that their child would receive psychotherapy at Rutgers Medical School at the expense of the Board of Education. That is not so.
>
> 3. As members of the child study team, it is our practice to inform parents of students placed by us at Rutgers Medical School that our financial responsibility is limited to the tuition component, and parents are informed by a Rutgers Day Hospital staff member that any additional services their children receive are their financial responsibility.
>
> 4. In a telephone conversation with Mr. Norman Travis, of Rutgers Community Mental Health Center on September 23, 1982, Mrs. Maron [school social worker] was informed that he tells parents before and after admission about their cost for therapy. In addition, the parents receive a confirming letter.
>
> 5. We never recommended psychotherapy to the parents as part of the Individualized Educational Plan, nor did we say anything to lead the parents to believe that it would be provided to them as a related service at our expense. [45a, 46a.]

The affidavit of the child's father, submitted in support of parents' motion for summary judgment stated:

> It was told to us prior to placement that this school would be at no cost to us and that it would be akin to a public school setting; that is, we would not incur any charges for our son's education. It was further told to us that "D.G." would receive the therapy that he needs as an integral part of the educational program.
>
> * * *
>
> Sometime after the placement, we were billed at the outrageous amount of $45.00 per day [for psychotherapy], and were eventually told that we should either submit the bills to our insurance carrier or pay them ourselves. We were absolutely astounded, because we were told by our school district that this placement would not be at any cost to us, and, in addition, what our son was receiving was nothing more than what he could have received in the local district, with the exception that the environment was therapeutic in structure (which was exactly what was needed).
>
> * * *
>
> If we knew that his placement at Child Day would result in our being charged for it, we never would have enrolled him there, simply because the financial burdens are well beyond our resources. The $23,000.00 bill at the present time might as well be $23,000,000.00. We believe that we were misled and misinformed by the district personnel

> and, in fact, also by employees at Child Day Hospital. [42a-44a.]

F.R.C.P. 56(c) provides that summary judgment shall be rendered:

> If the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Given the absence of any reference in the IEP to psychotherapy as a related service, the representations and perceptions of the parties at the time of the placement become highly relevant. We submit that failure of Judge Ackerman and the Court of Appeals to find a genuine issue of material fact with respect to the reasonable expectation of the parents was in error. This Court should grant certiorari to correct this error.

CONCLUSION

The Act is essentially a funding statute. This Court in *Rowley*, *supra*, noted the inappropriateness of case-by-case adjudication of the Act's outer limits in view of the legal constraints on the congressional spending power. Practically speaking, thousands of families and school districts nationwide who wrestle with the scope of "related services" on a daily basis desperately need specific guidance, if not from the Department of Education then from this Court.

In the alternative, the judgment of the Court of Appeals should be summarily vacated and this matter remanded to the District Court for further proceedings, in light of this Court's opinion in *Tatro*, and the genuine issue of material fact concerning the parties' understanding about payment for psychotherapy.

Respectfully submitted,

s/ DAVID B. RUBIN

RUBIN & RUBIN
Attorneys for Petitioner

APPENDIX

JUDGMENT ORDER OF UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DATED JUNE 21, 1984

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-5889

T.G. and P.G. Individually and on behalf of their infant child, "D.G."

vs.

BOARD OF EDUCATION OF PISCATAWAY, NEW JERSEY, and COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY,

Defendants

and

COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY,

Defendant-Third Party Plaintiff

vs.

PRUDENTIAL INSURANCE CO. OF AMERICA, and BLUE CROSS-BLUE SHIELD OF NEW JERSEY,

Third Party Defendants

Judgment Order

Board of Education of Piscataway, New Jersey, *Appellant*

Appeal from the United States District Court for the District of New Jersey — Trenton
(D.C. Civ. No. 82-3948)
District Judge: Honorable Harold A. Ackerman

Submitted Under Third Circuit Rule 12(6)
June 21, 1984
Before: ALDISERT, *Chief Judge,* HIGGINBOTHAM, *Circuit Judge,* and HUYETT, *District Judge.**

JUDGMENT ORDER

After consideration of all contentions raised by appellant, and for the reasons set forth in the district court bench opinion by the Honorable Harold A. Ackerman, *T.G. and P.G. v. Board of Education of Piscataway, New Jersey,* Civ. No. 82-3948 (D.N.J. Oct. 11, 1983), *reprinted in,* supp. app. at 1-12; it is

ADJUDGED and ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

s/ Aldisert
Chief Judge

Attest:

s/ Sally Mrvos
Clerk

Judgment Order

DATED: June 21, 1984

Certified as a true copy and issued in lieu
of a formal mandate on July 13, 1984.

Test:

s/ M. Elizabeth Ferguson
Chief Deputy Clerk, United States
Court of Appeals for the Third Circuit.

OPINION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (HAROLD A. ACKERMAN, DISTRICT JUDGE) DATED DECEMBER 12, 1983

T.G. and P.G., Individually, and on Behalf of Their Infant Child, "D.G.", Plaintiffs,

v.

BOARD OF EDUCATION OF PISCATAWAY, N.J., and the Community Mental Health Center of Rutgers Medical School, Defendants

v.

PRUDENTIAL INSURANCE COMPANY OF AMERICA, INC., and Blue Cross-Blue Shield, Third-Party Defendants.

Civ. A. No. 82-3948.

United States District Court,
D. New Jersey

Dec. 12, 1983.

Parents of emotionally disturbed 11-year-old boy commenced action against school board seeking to have board pay cost of "psychotherapy" services allegedly provided for boy as part of individualized education plan developed by board. On cross motions for summary judgment, the District Court, Harold A. Ackerman, J., held that psychotherapy was a "related service" within meaning of Education for All Handicapped Children Act, and thus costs of such services would be borne by school board.

Plaintiffs' motion granted.

Opinion

1. Federal Civil Procedure — key 2470, 2470.4

Summary judgment is not to be granted unless, after all reasonable inferences have been drawn in favor of the nonmoving party, there remains no genuine issue of material fact, and moving party is entitled to judgment as a matter of law. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.

2. Schools — key 159

Psychotherapy provided for an 11-year-old emotionally disturbed boy as part of his individualized education plan developed by school board constituted a covered "related service" within meaning of Education for All Handicapped Children Act, and thus costs of such services would be borne by school board. Education of the Handicapped Act, §§601(c), 602 et seq., as amended, 20 U.S.C.A. §§1400(c), 1401 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

3. Schools — key 148

Any inconsistent state regulations or "policy statements" with respect to whether psychotherapy services provided for 11-year-old emotionally disturbed boy as part of his individualized education plan developed by school board was a "related service" within meaning of Education for All Handicapped Children Act, and thus the responsibility of the board, were superseded by relevant definitions contained in federal regulations. Education of the Handicapped Act, §§601(c), 602 et seq., as amended, 20 U.S.C.A. §§1400(c), 1401 et seq.

Opinion

Theodore A. Sussan, Spotswood, N.J., for plaintiffs.

Irwin I. Kimmelman, Atty. Gen. of New Jersey by Robert K. Walsh, Newark, N.J., for Defendant Community Mental Health Center of the University of Medicine & Dentistry of N.J.

Pitney, Hardin, Kipp & Szuch, by Peter Laughlin, Newark, N.J., for third party defendant Blue Cross Plan of N.J.

Rubin, Lerner & Rubin by David B. Rubin, New Brunswick, N.J., for defendant Board of Educ. of Piscataway.

Shanley & Fisher by Charles A. Reid, III, Newark, N.J. for third party defendant Prudential Ins. Co. of America, Inc.

Vanderbilt & Siegel by Alan A. Siegel, Livingston, N.J., for third party defendant Blue Shield Plan of N.J.

HAROLD A. ACKERMAN, District Judge.

This matter arises under the Education For All Handicapped Children Act, 20 U.S.C. §1401 *et seq.* (the Act). Plaintiff D.G. is an eleven-year old boy who was classified as emotionally disturbed by the Child Study Team (CST) of the defendant Board of Education of Piscataway (Board). D.G. and his parents T.G. and P.G. commenced this action on November 22, 1982, seeking to have the defendant Board pay the principal charges plus any interest due and owing to the defendant Community Mental Health Center of the Rutgers Medical School for "psychotherapy" services allegedly provided as part of plaintiff D.G.'s Individualized Education Plan (IEP) developed by the CST. The defendant Community Mental Health Center has counterclaimed for the amount due and owing, cross-claimed for same against the

defendant Board, and impleaded the Prudential Insurance Company of America, Blue Cross of New Jersey, and Blue Shield of New Jersey, all of whom are plaintiff T.G.'s health insurance carriers. This matter is presently before me on motions for summary judgment brought by plaintiffs, defendant Board of Education, and by third-party defendants Prudential Insurance Company of America, Blue Cross of New Jersey and Blue Shield of New Jersey.

Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment is not to be granted unless, after all reasonable inferences have been drawn in favor of the non-moving party, there remains no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *See DeLong Corp. v. Raymond International,* 622 F.2d 1135 (3d Cir.1980). With this standard in mind, I turn first to consider plaintiffs' motion for summary judgment. For the reasons which follow, I have determined to grant plaintiffs' motion.

The undisputed facts relevant to this motion are as follows: Pursuant to the requirements of the Act, the Child Study Team of the defendant Board carefully evaluated plaintiff D.G.'s condition and as a result classified him as emotionally disturbed. Following discussion with D.G.'s parents, the CST recommended that D.G. be placed in a therapeutic environment in order to maximize the benefits he would receive. Specifically, the Child Study Team's IEP recommended that D.G. "[b]e provided with a totally therapeutic environment in a special education day school for the Emotionally Disturbed that will provide him with the controls and individual attention necessary for his social and emotional development. This is viewed as the least restrictive environment to meet his needs." It was agreed upon between the defendant Board and D.G.'s parents that the child would be placed

in the Child Day Hospital of the Community Mental Health Center of the Rutgers Medical School, University of Medicine and Dentistry of New Jersey. This placement commenced on September 30, 1980.

The Child Day Hospital is a specialized treatment program for seriously emotionally impaired children. As such, the Hospital provides, in its own words, "individual child psychotherapy, family therapy, and a broad spectrum of milieu therapy on an integrated, intensive basis." Educational services are also provided in an effort to enhance learning by each of the children involved while they are in therapy. When D.G.'s parents placed him in the Child Day Hospital, they were told that the program required without exception that every child participate in the "therapeutic treatment" portion of the day program.

D.G. remained at the Hospital until January 20, 1983, when, due to the success of the Hospital's program, he was able to return to his local school. The program at the Hospital had consisted of individual child psychotherapy two days a week, family therapy with the parents, and with or without the child, weekly or as indicated, mileau therapy on a daily basis, including therapeutic activity group, individual and group counseling and behavior modification, as well as special education on a daily basis in self-contained and departmentalized classes.

On October 24, 1980, plaintiffs T.G. and P.G. were informed by the Community Mental Health Center that the psychotherapy provided to D.G. as part of the Hospital's program would be assessed to them, and not to the school district, and that it would be charged at a rate of $45.00 per day. The Center has to date received no payments for these charges, which at the time of D.G.'s discharge had grown to a total of $25,200.00.

Opinion

In 1982 the parents sought to have the Board take responsibility for the cost of the psychotherapy. The Board refused to do so, giving the parents three reasons for its decision. First, it suggested that psychotherapy was not part of the IEP agreed to by both the Board and the parents. Second, it pointed to the fact that the New Jersey Department of Education had issued a policy statement to the effect that "psychotherapy" other than that necessary for diagnostic and evaluative purposes, was not a "related service" for which a local school district would be responsible under the mandate of the Act. Finally, the defendant Board took the position that nothing else in the Act or its implementing regulations required it to pay for this service. Plaintiffs then as now responded that psychotherapy is a "related service" within the meaning of the Act, and that in any event it was an integral and, in fact, required part of the Independent Education Program agreed upon by the defendant Board, the cost of which should be borne by the Board.

The Education For All Handicapped Children Act requires that all handicapped children be provided, at public expense, with a "free appropriate public education which emphasizes special education and related services designed to meet their unique needs." 20 U.S.C. §1400(c). As Justice Rehnquist, speaking for the Supreme Court in *Board of Education v. Rowley,* 176 U.S. 458, 102 S.Ct. 3034, 73 L.Ed.2d 690 (1982), stated, "the Act represents an ambitious federal effort to promote the education of handicapped children, and was passed in response to Congress' perception that a majority of handicapped children in the United States were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to "drop out" ' ". *Id.* at 179, 102 S.Ct. at 3037 (citations omitted).

Opinion

Under the Act, the "free appropriate public education" to be provided must be specially "tailored to meet the unique needs of the handicapped child" by means of the IEP. *Id.* at 181, 102 S.Ct. at 3038. The IEP is to be prepared at a meeting between a qualified representative of the local educational agency, the child's teacher, the child's parents or guardians, and where appropriate, the child. Local educational authorities must review, and if necessary, revise each child's IEP, including its statement of goals and objectives and list of specific services to be provided, at least annually. 20 U.S.C. §1414(a)(5).

Here there is no dispute than an appropriate IEP was prepared and agreed upon by the defendant Board and plaintiff parents. Further, there is no dispute that these parties also agreed to the implementation of the IEP through D.G.'s placement in the Child Day Hospital. The sole issue before me is whether the "psychotherapy" or counseling services provided by the Hospital staff to D.G. constitutes a covered "related service" within the meaning of 20 U.S.C. §1400(c).

The Act itself provides the starting point for my analysis. Section 1401(17) provides that:

> The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling services, except that such medical services shall be for diagnostic and evaluative purposes only) as may be required to assist a handicapped child to benefit from special education . . ."

Opinion

The Federal Regulations promulgated pursuant to the Act provide a further layer of definitions. 34 C.F.R. §300.13(b)(8) provides that "psychological services" as used in the Act includes:

> . . . (V) Planning and managing a program of psychological services, including psychological counseling for children and parents.

Additionally, 34 C.R.F. §300.13(b)(2) provides that " 'Counseling services' means services provided by qualified social workers, psychologists guidance counselors, or other qualified personnel."

Thus, while no explicit reference to "psychotherapy" is made in either the Act or the regulations, the definitions of "related services" which are provided are indicative of a Congressional intent to include it where appropriate among those services to be provided at no cost to the parents under the Act. This conclusion is reinforced by the fact that the only two published opinions on this issue have both reached the same result. *See Papacoda v. State of Connecticut*, 528 F.Supp. 68 (D.Conn. 1981); and *In the Matter of the "A" Family*, 184 Mont. 145, 602 P.2d 157 (1979). In the latter of these two cases, the Montana Supreme Court determined that, as a matter of federal law, the psychotherapy provided to an emotionally disturbed child who was placed in a residential setting pursuant to his IEP was a "related service" under the Act, despite the fact that the Montana State Board of Education had promulgated regulations which considered psychiatric therapy to be outside the definition of "related services" and thus chargeable to the parents. The Montana Supreme Court held that the federal regulations defining "related services" and "psychological services" superceded the inconsistent state regulations. In *Papacoda*, the District Court

held that psychotherapy provided to an emotionally disturbed child as an integral part of that child's special education was a "related service" within the meaning of the Act.

Both of these opinions pre-dated the Supreme Court's opinion in *Board of Education v. Rowley*. I find, however, that *Rowley* does not require a different result. In *Rowley*, the respondents—the parents of a child with only minimal residual hearing who had been furnished by the petitioner Board with a hearing aid for use in the classroom and who received additional instructions from tutors—filed suit to review a decision denying their request for a sign language interpreter to accompany the child to all her classes. The District Court, although finding that she performed better than the average child in her class and was advancing easily from grade to grade, determined that she was not performing as well academically as she would without her handicap. 483 F.Supp. 528, 532. This disparity between her achievement and her potential led the district court to decide that she was not receiving a "free appropriate education," which it defined as "an opportunity to achieve [her] full potential commensurate with the opportunity provided to other children." *Id.* at 534. A divided panel of the Second Circuit affirmed. The Supreme Court reversed, holding that the Act's requirement is satisfied by the Board's provision of "personalized instruction with sufficient support services to permit the child to benefit educationally from that instruction." 458 U.S. at 203, 102 S.Ct. at 3049. The Court noted that "such instruction and services must be provided at public expense, must meet the State's educational standards, must approximate the grade levels used in the State's regular education, and must comport with the child's I.E.P.". *Id.*

I conclude that the therapy provided to D.G. at the Child Day Hospital is of a different nature from the extraordinary sign-

language services requested for the handicapped child in *Rowley*. To the contrary, both the defendant Board and the plaintiff parents agreed upon D.G.'s placement at Child Day Hospital and the therapy provided to D.G. by the Hospital was a required part of its program. As such, the therapy was designed as an essential service to allow D.G. to simply benefit from the educational program planned for him. It was not designed as part of a package to maximize his performance in accordance with his potential, as was the case in *Rowley*.

Additionally, while sign language translation services are not mentioned in either the Act or its regulations, both mention psychological services. In fact it is undisputed here that the so-called psychotherapy which D.G. received at the Hospital, while administered under the supervision of a trained psychiatrist, was actually provided on a day-to-day basis by a staff member with no more credentials than a Masters in Social Work degree. Thus D.G.'s therapy might be described equally appropriately as "counseling services" or "psychological counseling"—both of which are specifically included by the regulations among the "related services" required to be provided at no cost to the parents under the Act.

My conclusion that the services received by D.G. must be paid for by the defendant Board is unaffected by its argument that New Jersey's policy is to the contrary. The defendant Board has submitted a copy of a "Policy Statement" by James W. Richardson, Director of the Bureau of Special Education of the New Jersey Department of Education concluding that " 'psychotherapy' as a related service that goes beyond that which can be educationally provided by personnel employed by the local school district, is not the responsibility of the local school district." In so stating, Mr. Richardson relies on the definition of "related

services" found in Section 6:28-1.2 of the N.J. Admin. Code. I find, however, that the definitions contained in the federal regulations must supercede inconsistent state regulations and "policy statements." *See* 34 C.F.R. §300.2(a).

In these circumstances I find that the therapy provided to D.G. falls within the category of "related services" the cost of which must be assumed by the defendant Board of Education of Piscataway. I will therefore grant plaintiffs' motion for summary judgment as against the defendant Board.

In light of this disposition of plaintiffs' motion, I will also grant the motions for dismissal by third-party defendants Prudential Insurance Company of America, Blue Cross of New Jersey and Blue Shield of New Jersey.

ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (HAROLD A. ACKERMAN, DISTRICT JUDGE) ENTERING SUMMARY JUDGMENT DATED NOVEMBER 15, 1983

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

THEODORE A. SUSSAN
407 Main Street
Spotswood, New Jersey 08884
(201) 251-8585
Attorney for Plaintiffs

Hon. Harold A. Ackerman

Civil Action No. 82-3948

T.G. and P.G., Individually and on behalf of their infant child, "D.G.",

Plaintiffs,

vs.

BOARD OF EDUCATION OF PISCATAWAY, NEW JERSEY, et als.,

Defendants.

ORDER ENTERING SUMMARY JUDGMENT

This matter being opened to the Court by Rubin, Lerner & Rubin, David B. Rubin, Esquire, appearing as attorneys for Board of Education of Piscataway, New Jersey, and Theodore A. Sussan,

Order

Esquire, appearing as attorney for Plaintiffs, T.G. and P:G., Individually and on behalf of their infant child, "D.G.", and Irwin I. Kimmelman, Attorney General of New Jersey, by Robert K. Walsh, Esquire, attorney for Defendant, Community Mental Health Center of Rutgers Medical School, College of Medicine and Dentistry of New Jersey, and Charles A. Reid, III, Esquire, appearing as attorney for Third Party Defendant, Prudential Insurance Company of America, and Alan B. Siegel, Esquire, appearing as attorney for Third Party Defendant, Medical Surgical Plan of New Jersey, and Pitney, Hardin, Kipp & Szuch, by Peter M. Laughlin, Esquire, appearing as attorney for Third party Defendant, New Jersey Blue Cross Plan, and it appearing that Plaintiffs, Defendants and all Third Party Defendants have moved for summary judgment, and the Court having considered the Motion papers and oral argument of counsel on October 11, 1983, and for the reasons set forth in the Court's Bench Opinion and for good cause shown, it is on this 15 day of Nov., 1983,

ORDERED AND DECLARED, that Plaintiffs' Motion for Summary Judgment is hereby granted and that Defendant Board of Education of Piscataway, New Jersey, is hereby ordered to assume and pay all costs charged to Plaintiffs by Third Party Defendant, Community Mental Health Center of Rutgers Medical School, College of Medicine and Dentistry of New Jersey, relative to the psychological services rendered to Plaintiffs which are found to be related services in accordance with 45 C.F.R. 121 a.13 and 20 U.S.C. 1401 (18) and

IT IS FURTHER ORDERED AND DECLARED, that summary judgment is granted in favor of Third Party Defendant, Medical Surgical Plan of New Jersey, and all claims by and against said Third Party Defendant are hereby dismissed, and

Order

IT IS FURTHER ORDERED AND DECLARED, that summary judgment be granted in favor of Third Party Defendant, New Jersey Blue Cross Plan, and all claims by and against said Third Party Defendant are hereby dismissed, and

IT IS FURTHER ORDERED AND DECLARED, that summary judgment is granted in favor of Third Party Defendant, Prudential Insurance Company of America, and all claims by and against said Third Party Defendant are hereby dismissed.

s/ Hon. Harold A. Ackerman

EDITOR'S NOTE

PAGES 18a thru 30a WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D. G. SCHOOL Martin Luther King TEACHER Patricia Spencer

CLASS/GRADE 3 SCHOOL YEAR 1980-81 PARTICIPANTS M. Haines, E. Maron, J. Guglielmella

PRESENT LEVEL Perceptual ANNUAL GOAL Improve perceptual skills

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will strengthen his eye-hand coordination as to accuracy, neatness, and fine-motor skills. Daniel will improve his visual memory processes. Daniel will improve his closure skills. Daniel will improve his fine-motor skills (manuscript).	Individual approach Multi-media methods High interest materials Game approach Beery method of: 1. tracing 2. copying 3. drawing from visual memory (using overhead projector) Handwriting workbook (manuscript and beginning cursive Using large crayons, paint brushes, clay (to strengthen fine-motor muscles)	Teacher observation Written seat work Chalk board work	9/80	9/81	

"EXHIBIT A"

INDIVIDUALIZED EDUCATION PLANS FOR D.G., 1980-1981

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL Martin Luther King TEACHER Patricia Spencer

CLASS/GRADE 3 SCHOOL YEAR 1980-81 PARTICIPANTS M. Haines, E. Maron, J. Gugliemella

PRESENT LEVEL Gross-Motor ANNUAL GOAL Daniel will improve all components of gross-motor skills

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will practice hopping, skipping, and jumping. Daniel will develop better skills with a ball (throwing, catching, and bouncing).	Adaptive physical education. High interest games	Teacher observation	9/80	9/81	

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME ____ D.G. ____ SCHOOL Martin Luther King TEACHER Patricia Spencer

CLASS/GRADE 3 SCHOOL YEAR 1980-81 PARTICIPANTS M. Haines, E. Maron, J. Gugliemella

PRESENT LEVEL Emotional ANNUAL GOAL Daniel will develop more age appropriate behavior

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will be less dependent on others. He will assume more responsibility for completion of work. He will respond appropriately to teacher directions and limits on his behavior. He will learn to express his feelings in an appropriate manner. He will gradually develop inner controls.	Charts Individual/group discussions Game and role-playing approach	Teacher observation	9/80	9/81	

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME ___ D.G. — SCHOOL Martin Luther King — TEACHER Patricia Spencer

CLASS/GRADE 3 — SCHOOL YEAR 1980-81 — PARTICIPANTS M. Haines, E. Maron, J. Guglielmella

PRESENT LEVEL Emotional — ANNUAL GOAL Daniel will decrease attention seeking behaviors

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will be less distractible. He will work independently for increasing periods of time. He will attend to appropriate stimuli in and out of the classroom.	Study carrels	Teacher observation	9/80	9/81	

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. — SCHOOL Martin Luther King — TEACHER Patricia Spencer

CLASS/GRADE 3 — SCHOOL YEAR 1980-81 — PARTICIPANTS M. Haines, E. Maron, J. Gugliemella

PRESENT LEVEL Social — ANNUAL GOAL To develop more appropriate peer interaction

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEV.
Daniel will learn to work more cooperatively with classmates. Daniel will learn to establish friendships.	Group activities Partnership projects	Teacher observation	9/80	9/81	

PISCATAWAY TOWNSHIP SCHOOLS | INDIVIDUALIZED EDUCATION PLAN | INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.C. SCHOOL Martin Luther King TEACHER Patricia Spencer

CLASS/GRADE 3 SCHOOL YEAR 1980-81 PARTICIPANTS M. Haines, E. Maron, J. Gugliemella

PRESENT LEVEL Social ANNUAL GOAL Improve interpersonal communications

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will be less pre-occupied with his own thoughts. He will respond more readily to conversation. He will develop a greater willingness to share experiences. He will maintain better eye contact during conversations.	Informal conversations Class participation Small group approach Multi-media methods	Teacher observation	9/80	9/81	

PISCATAWAY TOWNSHIP SCHOOLS | INDIVIDUALIZED EDUCATION PLAN | INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RMHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Math - 3rd grade ANNUAL GOAL To increase skills to grade level

S/SF146 Rev. 6/80 IH

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVE
Daniel will memorize the multiplication facts to 10. Daniel will learn to compute multiplication examples with 2-digit multipliers. Daniel will develop an understanding of beginning division concepts. Daniel will learn to solve word problems of increasing difficulty.	Target Math Series Teacher-made materials Lennes Math Series Math Text on 3rd grade level	Teacher observation Informal testing Daily assignments	4/82	4/83	

"EXHIBIT B"

INDIVIDUALIZED EDUCATION PLANS FOR D.G., 1982-83

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RWJIC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Perceptual ANNUAL GOAL Improve perceptual skills

S/S#146 Rev. 6/80 IH

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVD.
Daniel will continue to improve the accuracy and neatness of his fine-motor skills and will strengthen his eye-hand coordination. Daniel will continue to practice printing.	Individual approach Multi-media methods High interest materials Game approach Teacher-made materials Art Therapy classes	Teacher observation Written seat work Chalkboard work	4/82	4/83	

PISCATAWAY TOWNSHIP SCHOOLS | INDIVIDUALIZED EDUCATION PLAN | INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RMHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Gross-Motor ANNUAL GOAL Daniel will continue to improve all components of gross-motor skills

S/S#146 Rev. 6/80 LH

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEV.
Daniel will practice hopping, skipping and jumping. Daniel will continue to develop better skills with a ball (throwing, catching and bouncing).	Adaptive physical education High interest games	Teacher observation	4/82	4/83	

PISCATAWAY TOWNSHIP SCHOOLS | INDIVIDUALIZED EDUCATION PLAN | INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RWHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Emotional ANNUAL GOAL Daniel will continue to develop more age appropriate behavior

S/S#146 Rev. 6/80 1M

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will become more independent. Daniel will assume more responsibility for completion of daily assignments and homework. Daniel will attempt to complete assignments. Daniel will continue to express his feelings in an appropriate and direct manner. Daniel will continue to develop inner controls. Daniel will attempt to feel better about himself. Daniel will see that he is capable of success. Daniel will attempt to apply skills that he is acquiring in his present school to other settings.	Behavior Modification Program Individual/group discussions Game and role-playing approach	Teacher observation	4/82	4/83	

PISCATAWAY TOWNSHIP SCHOOLS | INDIVIDUALIZED EDUCATION PLAN | INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RWJHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. and Mrs. Ginsberg, L. Pysher, C. Dorowk- Evelyn Maron, Joseph Maron

PRESENT LEVEL Emotional ANNUAL GOAL Daniel will drcrease attention seeking behaviors

S/SP146 Rev. 6/80 1M

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEV
Daniel will continue to be less distractible. Daniel will continue to work independently for increasing periods of time. Daniel will attempt to develop better organizational skills. Daniel will continue to attend to appropriate stimuli in and out of the classroom. Daniel will continue to develop appropriate classroom skills. Daniel will attempt to stick with a task that he perceives as difficult.	Behavior Modification Program Praise and encouragement	Teacher observation	4/82	4/83	

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RMHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Social ANNUAL GOAL To develop more appropriate peer interaction

S/SP146 Rev. 6/80 IH

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEV
Daniel will continue to learn to work more cooperatively with classmates. Daniel will continue to establish friendships. Daniel will continue to develop age appropriate play skills.	Behavior Modification Program Group activities Partnership projects	Teacher observation	4/82	4/83	

PISCATAWAY TOWNSHIP SCHOOLS — INDIVIDUALIZED EDUCATION PLAN — INSTRUCTIONAL GUIDE SECTION

PUPIL'S NAME D.G. SCHOOL RMHC Child Day Hosp. TEACHER Lorna Pysher

CLASS/GRADE 4 FOR SCHOOL YEAR 1982-83 PARTICIPANTS Mr. & Mrs. Ginsberg, L. Pysher, C. Dorowka, Evelyn Maron, Joseph Novick

PRESENT LEVEL Social ANNUAL GOAL Improve interpersonal communications

S/SP146 Rev. 6/80 IH

SPECIFIC OBJECTIVES	SPECIAL EDUCATION MATERIALS PROCEDURES AND TECHNIQUES	EVALUATION PROCEDURES	DATE INST. BEGINS	DATE OBJ. REVIEWED	DATE ACHIEVED
Daniel will continue to be less preoccupied with his own thoughts. Daniel will continue to respond more readily to conversation. Daniel will continue to develop a greater willingness to share experiences. Daniel will continue to maintain better eye contact during conversations.	Informal conversations Class participation Small group approach Multi-media methods	Teacher observation	4/82	4/83	

INTERROGATORIES PROPOUNDED ON CHILD DAY HOSPITAL WITH ANSWERS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Docket No. 82-3948 (DRD)

T.G. and P.G., individually and on behalf of their infant child, "D.G.",

Plaintiffs,

vs.

BOARD OF EDUCATION OF PISCATAWAY, NEW JERSEY and COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY

Defendants,

vs

PRUDENTIAL INSURANCE CO. OF AMERICA and BLUE CROSS-BLUE SHIELD OF NEW JERSEY,

Third-Party Defendants.

TO: IRWIN I. KIMMELMAN
Attorney General of New Jersey
1100 Raymond Boulevard
Room 335
Newark, New Jersey 07102

Interrogatories

ATT: ROBERT K. WALSH, Deputy Attorney General

SIRS:

PLEASE TAKE NOTICE that the Defendant Board of Education of Piscataway hereby demands certified answers to the following Interrogatories by you, within the time provided by the Rules of the Court.

DEFINITIONS AND INSTRUCTIONS

A. As used herein, "document" includes any written, recorded or graphic material however produced or reproduced, including but not limited to correspondence, telegrams, memoranda, drafts, reports, computer printouts, other written communications, notes, analyses, work papers, minutes of conversations or of meetings, tape or other electronic or mechanical recordings or any other writings, including copies of any of the foregoing, now in the possession, custody or control of plaintiffs or their officers, agents or employees.

B. As used herein, the words "state in detail" "describe in detail" or "identify" mean to answer the question put, identifying all persons, firms or corporations involved therein or having knowledge thereof, identifying any documents which form the basis of your knowledge or belief, indicating upon what basis other than documents you base their knowledge or belief, providing all facts upon which you rely, supplying all dates in chronological order, and in all other respects providing full and complete statement of your knowledge or belief with regard to the question put.

Interrogatories

C. If you are unable to answer an Interrogatory in full, answer to the extent possible and explain your inability to answer the remainder of said Interrogatory.

D. The Interrogatories shall be deemed to be continuing, and if information as to the matter inquired of in these Interrogatories is obtained between the time the answers are made and the time of trial, supplemental or amending answers must be made at the earliest practicable date.

1. Set forth the name and address of all persons having factual knowledge of the subject matter of this action.

Carol Borowka, MSW — primary clinician; provides individual psychotherapy and family therapy

Deborah Matro, M.D. — consulting psychiatrist; supervisor of individual child psychotherapy

Nydia Preto, MSW — supervisor of family therapy

Norman Travis, Ph.D — clinical and administrative coordinator of Child Day Hospital

Lorna Pysher, MA — educator clinician; Danny's teacher

Boaz Cohen, MA — Project Director, Education Services and staff, UMDNJ, CMHC of RMS

2. Set forth in detail all facts which support your allegation in Paragraph 4 of your counterclaim that plaintiff D.G. required psychotherapy as part of his individualized educational program.

Interrogatories

Child Day Hospital is a specialized treatment program for seriously emotionally impaired children. As such, individual child psychotherapy, family therapy, and the broad spectrum of milieu therapy are provided on an integrated, intensive basis. Children are accepted for admission who are assessed to be in need of such specialized services to remediate psychiatric problems. They are admitted only with their parents' full knowledge and consent. Educational services are also provided, designed to enhance learning by our patients, in a manner complementary to the treatment program and individual treatment goals. Educational needs are primary neither to the decision to admit nor to discharge a patient. Psychotherapy is a basic part of the treatment program, not of the educational program. Both specialized education, individual and family psychotherapy, and other therapeutic modalities in combination, comprise the total program.

3. Describe in detail the nature of the "psychotherapy" administered to plaintiff D.G. Include the names and qualifications of all persons administering the "psychotherapy", frequency and nature of this service.

Psychotherapy refers to either individual child psychotherapy or family psychotherapy provided by a trained mental health clinician. Carol Borowka, MSW, was D.G.'s individual therapist, meeting on a one-to-one basis with him on a scheduled twice weekly basis for 30-45 minutes. This work was supervised by Deborah Matro,

M.D., consulting child psychiatrist. Ms. Borowka also provided family therapy on a once weekly, or less frequent, basis, with sessions typically lasting one hour. Nydia G. Preto, MSW, functioned as family therapy supervisor. Clinical responsibility for these psychotherapeutic services resided with Norman Travis, Ph.D., clinical psychologist and Clinical Administrative Coordinator for the Child Day Hospital.

4. Annex hereto copies of all records, ledgers, bills, invoices or other documentation reflecting the $45.00 procession charge for "psychotherapy".

See attached material.

5. Annex hereto copies of all policies, guidelines, operations, manuals or similar internal documentation concerning administration of "psychotherapy" by the Community Mental Health Center to its patients, said documentation to include any standards for eligibility, qualifications for persons performing said service, frequency of said service and costs thereof.

Answer to #5 on next page; also see attached material.

DATED: June 16, 1983

Interrogatories

RUBIN, LERNER & RUBIN
101 Bayard Street
P.O. Box 311
New Brunswick, New Jersey 08903
(201) 846-5500
Attorneys for Defendant
Board of Education of the
Township of Piscataway

By: s/ DBR
DAVID B. RUBIN

Interrogatories

5. Mental health clinicians administering psychotherapy must meet all of the standard professional criteria prior to being employed by the Community Mental Health Center, i.e., Masters Degree or Ph.D. from an accredited graduate school with corresponding supervised practical experience (see attached generic job descriptions). Physicians participating in the treatment must be board certified or board eligible in their specialty, licensed in the state of New Jersey, full or part-time members of the clinical faculty of the Department of Psychiatry, and extended privileges to practice medicine in the Community Mental Health Center by the Board of Trustees of the University of Medicine and Dentistry of New Jersey.

Interrogatories

CERTIFICATION IN LIEU OF OATH OR AFFIDAVIT

I hereby certify that the copies of the reports annexed hereto rendered by proposed expert witnesses are exact copies of the entire report or reports rendered by them; that the existence of other reports of experts, written or oral, are unknown to me, and if such becomes later known or available, I shall serve them promptly on the propounding party.

DATED:

By:
Attorney for

I(we), the undersigned, hereby certify that I(we) am(are) the in the within matter. I(we) certify that I(we) have read the attached interrogatories and the foregoing statements made by me(us) are true. I(we) am(are) aware that if any of the foregoing statements made by me(us) are willfully false, I(we) am(are) subject to punishment.

DATED: 7/18/83

s/ Gary W. Lamson

DATED:

DATED:

POLICY STATEMENT OF NEW JERSEY DEPARTMENT OF EDUCATION

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION

POLICY STATEMENT
Rules and Regulations on Special Education

Policy No: 2

Codo Reference: 6:28-1.2

Topic: Related Services — Psychotherapy

Question: If a child study team recommends "psychotherapy" as part of a pupil's IEP, does such a recommendation place an obligation on the school district to provide and/or fund such a service?

Policy Statement: The section of the Administrative Code which addresses the above question appears under N.J.A.C. 6:28-1.2 — Related Services. The term "psychotherapy" does *not* appear in the code. However, reference is made to psychological services and psychiatric services as they relate to diagnosis and evaluation *only*. If, as a related service, a pupil needs counseling, then said counseling can be provided by appropriately certified school personnel such as a guidance counselor, school psychologist or school social worker provided it is educationally related to the needs of the pupil.

The above section of the code further states that, 'Consistent with professional ethics, school personnel may make suggestions or give advice regarding the need for additional services which are not required by these regulations and which become the option of the parent to follow or not. Such recommendations place no obligation on the school district to provide or fund such services."

Policy Statement

In conclusion, "psychotherapy," as a related service that goes beyond that which can be educationally provided by personnel employed by the local school district, is not the responsibility of the local school district.

s/ James W Richardson
James W. Richardson, Ed.D.
Director
Bureau of Special Education

AFFIDAVIT OF PLAINTIFF, T.G.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Docket No. 82-3948(DRD)

T.G. AND P.G. INDIVIDUALLY, AND ON BEHALF OF THEIR INFANT CHILD, "D.G.,"

Plaintiffs,

vs.

BOARD OF EDUCATION OF PISCATAWAY, NEW JERSEY AND COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY,

Defendants,

vs.

PRUDENTIAL INSURANCE CO. OF AMERICA AND BLUE CROSS-BLUE SHIELD OF NEW JERSEY,

Third-Party Defendants.

AFFIDAVIT OF PLAINTIFF, T.G., IN SUPPORT OF NOTICE OF MOTION FOR SUMMARY JUDGMENT, ETC.

STATE OF NEW JERSEY:
SS:
COUNTY OF MIDDLESEX:

Affidavit

THOMAS GINSBERG, of full age, having been duly sworn, upon his oath, deposes and says:

1. I am the Plaintiff, T.G., in the above matter, and I make this Certification in support of the instant Notice of Motion for Summary Judgment, and other relief.

2. My son, "D.G.," is educationally handicapped and has been classified Emotionally Disturbed by my local Board of Education. "D.G." is an adopted child with whom my wife and I have had ongoing concerns regarding his behavior and abilities to learn. Prior to the district's recommendation that he be placed at Child Day Hospital, my wife and I obtained an independent evaluation from a psychologist, Dr. Rhonda W. Rapps. That doctor indicated that "D.G." was in need of a structured therapeutic environment. The report was shared with the Child Study Team and, indeed, they concurred in that opinion. The Team spent a good deal of time searching out possible placements and eventually recommended the Child Day program for our son. It was told to us prior to placement that this school would be at no cost to us and that it would be akin to a public school setting; that is, we would not incur any charges for our son's education. It was further told to us that "D.G." would receive the therapy that he needs as an integral pa[illegible] of the educational program. In addition, my wife and I were informed that, upon enrollment at Child Day,we had no option but to accept the entire gamut of services rendered.

3. After "D.G." was placed at the Center, my wife and I soon came to the realization that the placement was a proper one, and that for the first time in a long time, our son was showing progress in his emotional stability and there were some signs that he might at some point in time become a productive, healthy,

and happy citizen. Indeed, after signing the dozens of forms at the initial placement, I felt that the Child Study Team had done its work in obtaining an appropriate placement for "D.G."

4. As the weeks progressed, we observed the placement and saw that the so-called therapy was administered by his Art teacher and a social worker. We also wish to point out that there were times when the therapy did not last for very long and was administered as part of a group situation during, for example, Art class. Finally, it should be understood that there were reduced therapy during the summer, although we were subsequently charged for that service that was never rendered.

5. Some time after the placement, we were billed at the outrageous amount of $45.00 per day, and were eventually told that we should either submit the bills to our insurance carrier or pay them ourselves. We were absolutely astounded, because we were told by our school district that this placement would not be at any cost to us and, in addition, what our son was receiving was nothing more than what we could have received in the local district, with the exception that the environment was therapeutic in structure (which was exactly what was needed).

6. When we agreed to the Individualized Educational Program, it was made clear by all concerned that our son needed counselling that could best be given in a therapeutic environment. In addition, the type of school which would benefit our son needed to be structured and controlled to a greater degree than what exists in a public district. We are pleased to inform the Court that our son has been brought back into a public placement and that his stay at Rutgers was extremely beneficial and definitely a move in the right direction.

Affidavit

7. If we knew that his placement at Child Day would result in our being charged for it, we never would have enrolled him there, simply because the financial burdens are well beyond our resources. The $23,000.00 bill at the present time might as well be $23,000,000.00. We believe that we were mislead and misinformed by the district's personnel and, in fact, also by employees at Child Day Hospital.

s/ Thomas Ginsberg
THOMAS GINSBERG

Sworn and Subscribed to before
me this 13th day September, 1983.

s/ Theodore A. Sussan
THEODORE A. SUSSAN, ESQUIRE
An Attorney at Law of New Jersey

CERTIFICATION OF CHILD STUDY TEAM

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

RUBIN & RUBIN
101 Bayard Street, P.O. Box 311
New Brunswick, NJ 08903
(201) 846-5500
Attorneys for Defendant Board of Education

Hon. Harold A. Ackerman

Civil Action No. 82-3948

T.G. and P.C., Individually and on behalf of their infant child, "D.G.,"

Plaintiffs,

vs.

BOARD OF EDUCATION OF PISCATAWAY, NEW JERSEY, et als.,

Defendants.

CERTIFICATION IN OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

1. We are members of the Child Study Team of the Piscataway Public School District, and make this certification in opposition to plaintiffs' motion for summary judgment.

2. We have been advised by the Board of Education's attorney that the child's parents have stated that the Child Study

Certification

Team led them to believe that their child would receive psychotherapy at Rutgers Medical School at the expense of the Board of Education. That is not so.

3. As members of the Child Study Team, it is our practice to inform parents of students placed by us at Rutgers Medical School that our financial responsibility is limited to the tuition component, and parents are informed by a Rutgers Day Hospital staff member that any additional services their children receive are their financial responsibility.

4. In a telephone conversation with Mr. Norman Travis of Rutgers Community Mental Health Center on September 23, 1982, Mrs. Maron was informed that he tells parents before and after admission about their cost for therapy. In addition, the parents receive a confirming letter.

5. We never recommended psychotherapy to the parents as part of the Individualized Educational Plan, nor did we say anything to lead the parents to believe that it would be provided to them as a related service at our expense.

6. We certify that the statements made by us herein are true. We understand that if any of said statements are wilfully false, we are subject to punishment.

s/ Evelyn K. Maron
EVELYN K. MARON, MSW
School Social Worker

s/ Joseph Novick
JOSEPH NOVICK
School Psychologist

Certification

s/ Nancy Greenfield
NANCY GREENFIELD
Learning Disabilities
Teacher-Consultant

DATED: September 28, 1983

Office - Supreme Court, U.S.
FILED
NOV 16 1984
ALEXANDER L. STEVAS,
CLERK

No. 84-461

In The
Supreme Court of the United States
October Term, 1984

PISCATAWAY TOWNSHIP BOARD OF EDUCATION
Petitioner,

vs.

T.G. and P.G., Individually and on behalf of their child, D.G., COMMUNITY MENTAL HEALTH CENTER OF RUTGERS MEDICAL SCHOOL, COLLEGE OF MEDICINE AND DENTISTRY OF NEW JERSEY,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI ON BEHALF OF T.G. AND P.G., AND THEIR INFANT CHILD, D.G.

THEODORE A. SUSSAN
Attorney for Respondents T.G., P.G. and D.G.
407 Main Street
Spotswood, N.J. 08884
(201) 238-0900

COCKLE LAW BRIEF PRINTING CO., (800) 835-7427 Ext. 333

QUESTIONS PRESENTED

1. Whether this Court should deny the writ since the standards set forth in Rule 19 have not been met?

2. Whether the decisions of the Courts below were in accord with other applicable decisions of this Court?

3. Was the therapy and counseling given to D.G. a "related service" under the Education For All Handicapped Children Act, 20 U.S.C. § 1401 et. seq?

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Six-page Running Record of all telephone calls Board of Education made relative to D.G. ..... App. 6

OPINIONS BELOW

The Judgment Order of the United States Court of Appeals for the Third Circuit dated June 21, 1984 is printed in Petitioner's Appendix at page 1a. The opinion of the United States District Court for the District of New Jersey dated December 12, 1983, *T.G. v. Bd. of Education of Piscataway,* 576 F.Supp. 420 (D.N.J. 1983) is printed in Petitioner's Appendix at page 4a.

JURISDICTION

Jurisdiction is conferred on this Court in accordance with 28 U.S.C. § 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

1. 20 U.S.C. § 1401 (17):

> The term "related services" means transportation, and such developmental, corrective and other supporting services, including speech pathology and audiology, psychological services, physical and occupational therapy, recreation, and medical and counseling service, except that such medical services shall be for diagnostic and evaluative purposes only as may be required to assist a handicapped child to benefit from special education . . .

2. 45 C.F.R. 121a.13:

> Defines related services as meaning "transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and in-

cludes . . . psychological services . . . counseling services . . . The term also includes school health services, social work services in schools, and parent counseling and training . . .

3. 45 C.F.R. 121a.13(b)(2):

"Counseling services" means services provided by qualified social workers, psychologists, guidance counselors, or other qualified personnel . . .

4. 45 C.F.R. 121a.13(b)(8):

"Psychological services" include: (i) administering psychological and educational tests, and other assessment procedures; (ii) interpreting assessment results; (iii) obtaining, intergrating, and interpreting information about child behavior and conditions relating to learning; (iv) consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behaviorial evaluations; and (v) planning and managing a program of psychological services, including psychological counseling for children and parents . . . "

STATEMENT OF THE CASE

This litigation commenced by plaintiffs' filing a Complaint in accordance with the Education for All Handicapped Children Act, 20 *U.S.C.* 1401, *et. seq.* The Court of Appeals for the Third Circuit affirmed the entry of summary judgment since, after all reasonable inferences had been drawn in favor of the non-moving party, there remained no genuine issue of material fact, and plaintiffs were entitled to judgment as a matter of law.

Plaintiff, "D.G.", is a handicapped child who has been classified by the Board of Education of Piscataway ("Board") as emotionally disturbed. Psychological testing by the Board's Child Study Team ("CST") resulted in a recommendation that D.G. be provided with a "totally therapeutic environment in a special education day school for the emotionally disturbed." Petitioner's brief, page 4 states *inter alia,* "Nowhere did the IEP specify psychotherapy or any other 'psychological services' as a required component of the educational plan." This is false and not in accordance with the evidence on record below. Petitioner's appendix is incomplete and as a result misleading. Also, pages 18a through 30a contain only the second part of the individualized educational plan ("IEP") for D.G. The Petitioner's CST prepared the IEP. The IEP is composed of two parts, the basic plan section and the instructional guide. Together, they form the IEP. The New Jersey regulations are contained in the New Jersey Administrative Code.

N.J.A.C. 6:28-1.8(b) provides:

> The individualized education program for each educationally handicapped pupil shall consist of a basic plan section and an instructional guide necessary to assist the teacher(s) in planning and providing ongoing activities.

N.J.A.C. 6:28-1.8(d)2 provides:

> The basic plan section of the individualized education program shall include, but not be limited to:
>
> (2) A statement of the team's decision which determined pupil eligibility for special education and related services.

The basic plan section is, in reality, the first and most important part of any IEP. This basic plan section is

found at Ra-1. This document summarizes D.G.'s problems and states that his emotional disturbance is interfering with his ability to learn. On page Ra-4 the recommended program is stated:

> "1. Classify as Emotionally Disturbed.
>
> "2. Be provided with a totally therapeutic environment in a special education day school for the Emotionally Disturbed that will provide him with the controls and individual attention necessary for his social and emotional development. This is viewed as the least restrictive environment to meet his needs."

As can be seen, the document is signed by the entire Child Study Team.

Thus, D.G.'s IEP mandated a totally therapeutic environment be provided. The Courts below found that a therapeutic environment must, by definition, contain some therapy. To assert otherwise would be nonsense. The basic plan section calls for a therapeutic environment, the parents were told that it was needed, and there was no choice but to accept it as part of the educational program.

Through discovery, it was determined that the Board of Education maintained a running record of all telephone calls made relative to D.G. Found at Ra-5 is the six-page record in this case. On page Ra-6, next to the date of August 18, 1980, at 3:00 p.m., Mrs. Walker (a social worker with the Board of Education) placed a telephone call to D.G.'s father, T.G. The following notation then appears:

> "Ms. W. said Team agrees w/psychologist (Rapps) that out placement is best. But since psychotherapy is needed, Team thinks Rutgers Day Hospital is best because other schools don't have therapy."

On August 22nd at 2:00 p.m. a meeting was held at the Board of Education building in Piscataway. Present were the parents, Mrs. Maron (school social worker), and other school personnel. Ra-9 contains a summary of this meeting. D.G.'s mother (P.G.) raised the question as to payment of certain costs:

> "No one was 'aware' that costs were involved and if they were, major medical covered the costs to a large extent. Mrs. Maron mentioned a need to explain to State steps (sic) prior to sending Dan to day school and gave an evasive answer to T.G.'s question on how they would justify it."

The Board then told D.G.'s parents that the Community Health Center of Rutgers Medical School in Piscataway was the most appropriate and least restrictive placement for D.G. The CST and the parents developed an individualized educational plan (IEP) for D.G. for the 1980/81 school year. The CST informed the parents that psychotherapy would be needed for D.G.'s education. In January, 1983, D.G. returned to his neighborhood school, since much progress had been made at the Child Day Hospital.

In accordance with the IEP a form of counseling was given to D.G. by staff at the Community Mental Health Center. This counseling was performed as part of the educational program by non-educationally certified personnel. D.G. received therapy from Ms. Carol Borowka, a social worker, and Ms. Gay Belknap, an art teacher.

When the parents of D.G. (T.G. and P.G.) brought their son to Child Day Hospital, they were told that the program requires, *without option*, that every pupil must participate in the "therapeutic treatment" portion of the

day program. They were further informed that this "treatment" was an integral part of the educational program and was absolutely required if D.G. was to benefit from his education.

The parents informed the Board that the costs of counseling should not be their responsibility. The Board declined payment of the bill, which now totals $25,200.00, a sum far in excess of the parents' financial abilities.

On October 11, 1983, the Honorable Harold A. Ackerman considered motions for summary judgment made by all parties. Summary judgment was granted in favor of plaintiffs and held that the defendant Board of Education was responsible for the cost of the therapy given D.G. at the Rutgers Community Mental Health Center.

———o———

REASONS FOR DENYING THE WRIT

I.

The Therapy Provided D.G. Is A "Related Service" Under The Act.

A close reading of the lower courts' opinion makes clear that there was no judicial pronouncement that the therapy rendered D.G. was in fact "psychotherapy." The opinion printed in petitioner's appendix at 13a, states:

> "In fact, it is undisputed here that the so-called psychotherapy which D.G. received at the hospital, while administered under the supervision of a trained psychiatrist, was actually provided on a day-to-day basis by a staff member with no more credentials than a Masters in Social Work degree. Thus, D.G.'s therapy might be described equally appropriately as 'coun-

> seling services' or 'psychological counseling'—both of which are specifically included by the regulations among the related services required to be provided at no cost to the parents under the Act."

This is significant since the cases that Petitioner relies upon deals mainly with the "medical services" exclusion from related services. In this regard Petitioner would have the court believe that the therapy given D.G. was medical in nature, as was the *psychiatric* services rendered in *Darlene L. v. Illinois State Bd. of Education,* 568 F.Supp. 1340 (N.D. Ill, E.D. 1983). In *Darlene L.,* supra, the services were provided by licensed physicians. In the case at bar, D.G. received therapy from two individuals, a Ms. Carol Borowka, a social worker holding a Masters of Social Work degree (MSW) and a Ms. Gay Belknap, an art teacher holding a Bachelor of Fine Arts degree (BFA). It was suggested below that the Petitioner has in its employ many social workers and art teachers who could have provided the counseling received by D.G. Furthermore, the label "psychotherapy" is very misleading. It appears that Child Day Hospital is imposing this term on a group of services which include services that are to be provided without charge to the parent under the Federal Code above cited and under the New Jersey Administrative Code 6:28-1.2. To this extent, the charges are improper and the label (psychotherapy) is gratuitous.

Assuming for the moment that the counseling by the social worker and art teacher was psychotherapy, there exists consistent case law which includes this type of theapy in the definition of a related service. *In the Matter of the "A" Family,* 184 Mont. 145, 602 P. 2nd 157 (Mont. 1979); *Papacoda v. State of Connecticut,* 528 F. Supp. 68

(D. Conn. 1981). These cases correctly conclude that psychotherapy must be provided at no cost to the parent. In fact, a close reading of the New Jersey definition of related services upholds this view. There appears to be a distinction made between medical and non-medical services. N.J.A.C. 6:28-1.2 reads as follows:

> "Related services" means transportation and such developmental, *corrective,* social and other *supportive* services as are required to assist a handicapped pupil to benefit from a free and appropriate education. This includes *speech correction, audiology, psychological* services, social work services, learning consultant services, *physical therapy, occupational therapy, recreation,* early identification and assessment of disabilities in pupils, vocational services, counseling services *and medical and psychiatric services for diagnostic or evaluation purposes.* The term includes, but is not limited to, parent counseling related to the education of a pupil and other related services that may be required as a part of the pupil's individualized education program. The term does not include *medical treatment* or the provision of prosthetic devices for personal use outside of an educational program. Consistent with professional ethics, school personnel may make suggestions or give advice regarding the need for additional services which are not required by these regulations and which become the option of the parent to follow or not. Such recommendations place no obligation on the school district to provide or fund such services (emphasis added)."

It should be noted that the phrase "and medical and psychiatric services *for diagnostic or evaluation purposes"* is separated from the types of services that are included as possible related services by it being related to diagnostic or evaluation purposes. In addition, the term does not include medical treatment.

"Medical Services" is a very specific *legal* term in P.L. 94-142. Despite common usage of the word "medical," P.L. 94-142 includes *only* services which are "provided by a *licensed physician*". (Regulations, 300.13(b)(4)). Thus, any service which is otherwise a related service, and which is provided by a *non-physician* (including therapists, nurses, counselors, psychologists, audiologists, etc.), is not a "medical" service under P.L. 94-142 and, thus, may be an educational responsibility. It is worth noting that the cause generating the need for a service may be medical, but the effect, and their amelioration, is often educational and particularly so under the broad concept of education that now permeates out law. Clearly in this case, an art teacher and social worker did not render to D.G. either medical treatment or psychiatric services.

The court's decision in *Irving Independent School District v. Tatro,* 68 U.S. —, 104 S.Ct. —, 82 L.Ed. 2d 664 (July 5, 1984) does not aid petitioner's cause. The court there dealt with the issues of what is a "related service." The court held, at page 673:

> "We also agree with the Court of Appeals that provision of CIC is not a 'medical service,' which a school is required to provide only for purposes of diagnosis or evaluation. See 20 U.S.C. §1401(17) (20 USCS §1401 (17)). We begin with the regulations of the Department of Education, which are entitled to deference. See, e.g., Blum v. Bacon, 457 US 132, 141, 72 L.Ed. 2d 728, 102 S.Ct. 2355 (1982). The regulations define 'related services' for handicapped children to include 'school health services,' 34 CFR §300.13(a) (1983), which are defined in turn as 'services provided by a qualified school nurse or other qualified person,' §300.13(b)(10). 'Medical services' are defined as 'services provided by a licensed physician.' §300.3(b)(4). Thus, the Secretary had determined that the services of a school nurse otherwise qualifying as a 'related

service' are not subject to exclusion as a 'medical service,' but that the services of a physician are excludable as such.

"This definition of 'medical services' is a reasonable interpretation of congressional intent. Although Congress devoted little discussion to the 'medical services' exclusion, the Secretary could reasonably have concluded that it was designed to spare schools from an obligation to provide a service that might well prove unduly expensive and beyond the range of their competence. From this understanding of congressional purpose, the Secretary could reasonably have concluded that Congress intended to impose the obligation to provide school nursing services.

"Congress plainly required schools to hire various specially trained personnel to help handicapped children, such as 'trained occupational therapists, speech therapists, psychologists, social workers and other appropriately trained personnel.' S Rep No. 94-168, supra, at 33. School urses have long been a part of the educational system, and the Secretary could therefore reasonably conclude that school nursing services are not the sort of burden that Congress intended to exclude as a 'medical service.' By limiting the 'medical services' exclusion to the services of a physician or hospital, both far more expensive, the Secretary has given a permissible construction to the provision.

"Petitioner's contrary interpretation of the 'medical services' exclusion is unconvincing. In Petitioner's view, CIC is a 'medical service,' even though it may be provided by a nurse or trained layperson; that conclusion rests on its reading of Texas law that confines CIC to uses in accordance with a physician's prescription and under a physician's ultimate supervision. Aside from conflicting with the Secretary's reasonable interpretation of congressional intent, however, such a rule would be anomalous. Nurses in Petitioner's school district are authorized to dispense oral medications and administer emergency injections in

accordance with a physician's prescription. This kind of service for nonhandicapped children is difficult to distinguish from the provision of CIC to the handicapped.

"It would be strange indeed if Congress, in attempting to extend special services to handicapped children, were unwilling to guarantee them services of a kind that are routinely provided to the nonhandicapped.

"To keep in perspective the obligation to provide services that relate to both the health and educational needs of the handicapped students, we note several limitations that should minimize the burden Petitioner fears. First, to be entitled to related services, a child must be handicapped so as to require special education. See 20 U.S.C. §1401(1) (20 USCS §1401(1)); 34 CFR §300.5 (1983). In the absence of a handicap that requires special education, the need for what otherwise might qualify as a related service does not create an obligation under the Act. See 34 CFR §300.14, Comment (1) (1983).

"Second, only those services necessary to aid a handicapped child to benefit from special education must be provided, regardless how easily a school nurse or layperson could furnish them. For example, if a particular medication or treatment may appropriately be administered to a handicapped child other than during the school day, a school is not required to provide nursing services to administer it.

"Third, the regulations state that school nursing services must be provided only if they can be performed by a nurse or other qualified person, not if they must be performed by a physician. See 34 CFR §§300.13 (a)(b)(4), (b) (10) (1983). It bears mentioning that here not even the services of a nurse are required; as is conceded, a layperson with minimal training is qualified to provide CIC. See also, e.g., Department of Education of Hawaii v. Katherine D, 727 F2d 809 (CA9 1983) (Footnotes deleted.)"

Based upon the above, it should be clear that Petitioner misconstrues the holding in *Tatro*. Indeed, the Petitioner in *Tatro* was urging that a service be deemed medical in nature if there was some direct supervision by a physician. The Court rejected that notion and relied in part on the regulations of the Department of Education which flatly state that "medical services" are "services provided by a licensed physician."

The Court in *Tatro* enunciated the "test" as to whether or not a particular service is an included "related service" or an excluded "medical service." In order to be an included related service it cannot be rendered directly by a physician or hospital; a child must be handicapped so as to require special education; the services must be necessary to enable a handicapped child to benefit from special education; and the service to be beneficial must be administered during the school day. The therapy given D.G. fits squarely into this definition. Although Petitioner argues that the therapy was beyond the range of school personnel, there is not one shred of evidence supporting this argument. On the contrary, as the District Court found, ". . . the so-called psychotherapy which D.G. received . . . was actually provided . . . by a staff member with no more credentials than a Masters in Social Work degree." (13a).

II.

The District Court Did Not Err In Granting Summary Judgment In This Matter.

Petitioner's brief suggests that there were genuine issues of material fact such that summary judgment should not have been granted. This is ironic in that it was Peti-

tioner who first moved before the District Court for summary judgment, alleging that there were no issues of material fact. The material facts were not in dispute, and the Court below so found. The perceptions and representations of the parties at the time of placement were not relevant to the issue of whether or not the therapy D.G. received was a "related service."

As the Court below noted in its decision, the Federal Rules of Civil Procedure provides that summary judgment is not to be granted unless, after all reasonable inferences have been drawn in favor of the non-moving party, there remains no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The Court found that the Child Study Team's IEP recommended that D.G. be provided with a totally therapeutic environment in a special education day school for the emotionally disturbed that will provide him with the controls and individual attention necessary for his social and emotional development. This was viewed as the least restrictive environment to meet D.G.'s needs. The Court also found that both the Petitioner and the parents agreed upon D.G.'s placement at Child Day Hospital and that the therapy provided to D.G. by the Hospital was a required part of its program. As such, the therapy was designed as an essential service to allow D.G. to benefit from the educational program planned for him. It was not designed as part of a package to maximize his performance in accordance with his potential as was the case in *Board of Education of the Hendrick Hudson Central School District v. Rowley,* 458 U.S. 176, 102 S. Ct. 3034, 73 L.Ed. 2d 690 (1982).

The District Court had ample evidence to conclude that there was no genuine issue as to any material fact, and respondents were entitled to a judgment as a matter of law.

III.

The Court In Its Sound Judicial Discretion Should Deny The Writ.

All of the published cases dealing with psychotherapy as a related service are consistent with one another. *Darlene L.*, supra, *In The Matter of The "A" Family,* 184 Mont. 145, 602 P.2d 157 (Mont. 1979), *Papacoda v. State of Connecticut,* 528 F.Supp. 68 (D. Conn. 1981), *T.G. v. Bd. of Education of Piscataway,* 576 F.Supp. 420 (D. N.J. 1983). These cases are in accord with the outcome in the case at bar. There is not here an important question of federal law which should be settled by this Court. It has already been decided.

The Supreme Court has dealt with the issue of the medical services exclusion by virtue of the *Tatro* decision. The Court below arrived at a result completely and wholly consistent with *Tatro.* This Court should not be called on to render decisions as to each possible service that a handicapped child may be given. There is no comprehensive listing of what can be a related service and the law has already been made clear as to the issue of medical versus non-medical services. Petitioner has not met the requirements of Rule 19 and the writ should be denied.

CONCLUSION

For the reasons set forth above, the respondents herein submit that a writ of certiorari should not be granted in this case.

Respectfully submitted,

/s/ THEODORE A. SUSSAN
Attorney for Respondents

APPENDIX

PISCATAWAY TOWNSHIP SCHOOLS
Department of Special Services
Piscataway, New Jersey

INDIVIDUAL EDUCATION PROGRAM
BASIC PLAN SECTION

PUPIL'S NAME: Daniel Ginsberg

DATE OF BIRTH: 4/2/72

PRESENT PLACEMENT: Martin Luther King—Patricia Spencer—Grade 3

DATE: September 24, 1980

REASON FOR REFERRAL:

Social and behavioral problems influencing academic performance.

CHILD STUDY TEAM SUMMARIES:

Educational Evaluation Summary:

Daniel is an 8 year old third grader who has been experiencing increasing difficulty with social skills and behavior in school. He has poor work habits, is very distractible, and seems to need constant supervision in order to remain on task.

Testing indicates that Daniel is presently functioning in the average range of intellectual ability with strengths in vocabulary development, general information, and auditory memory. Auditory perception skills are generally well developed. Daniel's visual-motor integration skills are more than a year below his chronological age and visual perception is inadequately developed, with specific weaknesses in the areas of visual memory and closure.

Daniel is capable of reading well above grade level, as he posses excellent phonetic skills and comprehension. Oral reading is at a mid-third grade level and is marked by errors of omission, substitution, and insertion. Silently, Daniel comprehends material adequately to a mid-fourth grade level, and word recognition skills are developed to a six grade level. Daniel's fine-motor skills are poor, and his handwriting is executed too quickly and carelessly, resulting in an almost illegible product.

Daniel seems to be generally preoccupied with his own thoughts and does not exert a good deal of effort when working on academic tasks. He lacks motivation and does not seem to derive satisfaction from his obvious academic abilities. Daniel needs to acquire a greater awareness of his own strengths and weaknesses and develop some interest in improving weak areas as well as pride in his many accomplishments.

Social Work Summary:

Danny was referred to the Child Study Team for an evaluation by his teacher because of concern over his social and academic functioning. He was previously evaluated privately in 1977, as a pre-schooler, but not classified. The Ginsbergs have been concerned about Danny for quite some time. According to them, they were always told that they had a "difficult" child, until a Psychological Evaluation, conducted in June, 1980, diagnosed residual autism.

Danny was adopted at twenty months. Very little is known about his early history. Since the Ginsbergs have had Danny, they have been under considerable strain, and the management of his behavior has been a continuing problem.

Danny was described as a boy who does not know how to communicate with people. However, he has a tendency to become fixated on objects and can spend considerable time talking to or about them. His social behavior was characterized as very inappropriate and "animalistic". When interviewed by the Social Worker, Danny responded minimally to all questions. He was very pre-occupied with a toy that he was pretending was a rocketship. Danny talked to himself and the toy continually during the interview and was very active.

The Ginsbergs are very concerned and anxious that Danny be placed in a program that can help him as soon as possible.

Psychological Evaluation Summary:

Danny is a bright boy whose non-verbal productions do not parallel his verbal abiility. There seem to be autistic features which are interfering with his ability to function to potential academically, socially, or emotionally.

Because Danny has such difficulty concentrating on the work at hand and noes not interact with teachers or peers in an acceptable manner, he cannot receive an optimal educational experience within the framework of a regular classroom even if he were to receive additional help in the form of Resource Room or supplemental instruction.

Health Summary:

Normal physical (August 8, 1980)

Neuropsychiatric Evaluation Summary:

Daniel is presently functioning on an emotionally disturbed level as indicated by his extremely immature behavior and lack of age-appropriate emotional controls. Although he is a basically intelligent boy, many of his thoughts are

atypical and lack a sense of reality that is normal for a child his age. His continuous questioning and continuous activity are reminiscent of a much younger child as are his figure drawings. He has a poor self-concept and lacks a strong sense of identity.

TEAM CONCLUSIONS:

Intellectually, Daniel is functioning in the average range, with a significant discrepancy in favor of verbal items wherein he is functioning in the high-average range. Abstract reasoning and knowledge of vocabularly words were his relative strengths. Daniel's functioning is directly affected by pronounced external difficulties. His behavior is similiar to that of a much younger boy. He exhibits many infantile patterns and seems inner driven. Many of his mannerisms and behaviors are unique. Daniel is distractible and often introduces irrelevant material to a discussion. Daniel has a tendency to become fixated on inanimate objects and does not perceive the effect of his actions and does not understand the consequences.

Perceptually, Danny's auditory processes are a significant strength. However, visual perceptual deficits exist in the areas of memory, closure, and visual-motor integration.

Academically, Daniel reads with excellent comprehension to a mid-fourth grade level, although orally he makes numerous errors of omission beyond the mid-third grade level. Daniel has excellent word recognition and phonetic skills which he utilized to spell at a mid-fourth grade level. Arithmetic skills are at a mid-third grade level. Daniel's written work reveals his poorly developed handwriting as well as a lack of serious effort. The absence of persever-

ance may have resulted in generally depressed academic skills.

Daniel's parents are concerned that his problems be acknowledged by the school district and are anxious that remediation of them begin as soon as possible. At home Daniel is reported to be almost impossible to manage. The management problem and its impact on family members has reportedly been the basis for much stress within the family.

RECOMMENDED PROGRAM:

1. Classify as Emotionally Disturbed.
2. Be provided with a totally therapeutic environment in a special education day school for the Emotionally Disturbed that will provide him with the controls and individual attention necessary for his social and emotional development. This is viewed as the least restrictive environment to meet his needs.

CHILD STUDY TEAM MEMBER'S ROLE FOR IMPLEMENTING THE VARIOUS ASPECTS OF THE IEP:

The LDTC will monitor the educational program.

The Social Worker will maintain appropriate contact with the family.

The Psychologist will consult with the school personnel regarding emotional development.

/s/ Evelyn Maron
School Social Worker

/s/ Mildred Haines
Learning Disabilities
Teacher-Consultant

/s/ Joseph Gugliemella
School Psychologist

EM:JG:MH:su

TELEPHONE CALLS RE: DANNY/SCHOOL

Date—Time—Caller—Callee—Summary:

8/12/80, 10:30 a.m., TG, Mr. Collier: 1) Inquired re. my letter 5/8/4. 2) Mr. Collier said reply was sent out. 3) TG described situation. 4) Mr. Collier said Child Study Team is employed 10 mos./yr.—important to call now. 5) TG described how Mr. Collier's name was obtained—through Mr. Wilson. 6) Collier said he can get a Second Team if there are cancellations (if no cancellation, can get outside evaluation).

8/12, 5 p.m., Betty Walker (Social Worker), TG/PG: 1) Mr. Collier asked her if cancellation—she has one cancellation for Wed. 13/Thu. 14. TG asks for Thu. 14. 2) Walker OK—3 p.m.

8/14, Meeting w/Betty Walker: Explanation of Dan's problem. TG signed form for evaluation at meeting. Dan evaluated by Mrs. Greenfield and seen by Mrs. Walker.

8/18, 9:45 a.m., PG, Betty Walker: BW told PG Team thinking of Day Placement. BW making calls to find places. Ms. Maron now the social worker on this case and would continue contacts. Appointment set for 9/10 for psychiatric evaluation.

8/18, 3 p.m., Mrs. Walker, T. Ginsberg: Mrs. W. said Team agrees w/Psychologist (Rapps) that out placement is best. But since psychotherapy is needed, Team thinks Rutgers Day Hospital is best because other schools don't have therapy. Mrs. W. tried to find out how to get admission to RDH—found that they do own screening & testing. Requested TG to call Northern Focus Team (Rutger's screening arm) and initiate process.

8/18, 3:30 p.m., TG, Dr. Finkelstein (Northern Focus): TG described above conversation. Dr. F requested brief outline, which TG did. Dr. F requested copies of Reports to be sent to him ASAP. Dr. F said he

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was not sure there *is* room available in this program. TG requested to find out.

8/18, 3:45 p.m. Dr. F., TG: Dr. F. found out that there *is* room available, reiterated to send Reports ASAP to instate process.

8/19, 3:45 p.m., PG, Dr. Travis (RDH) left message to be called back.

8/19, — : PG delivered 1977 records (Chase, Rosenberg Speeck) and Rapps report to Dr. Finkelstein. Left w/receptionist.

8/20, 9:30 a.m., PG, Mrs. Evelyn Maron: PG recapped TG conversation w/(social worker)- Dr. Finkelstein, EM stated they are waiting for results of RDH evaluation. She would check if School Board had been requested to vote funds for Dan's Day Placement and might need contingency plan for start of school in Sept. since placement impossible by then. PG suggested meeting with Team this week to discuss.

8/20, 10:15 a.m., Maron, PG: School Board already met in Aug. Request for Day Placement Funds to be voted on at 9/15 meeting. Maron argued for meeting of Team and PG and TG meeting, set tentatively for Fri. 8/22 at 2 p.m. EM to call and confirm or set another time in a.m. of 8/22.

8/20, 10:30 a.m., PG: Dr. Finklestein left message to call back.

8/20, 1 p.m., Dr. Finklestein: PG confirmed that received reports and had given them to director (PG unable to get specific name). Appropriate directors of RDH and NFT aware of problem. RDH would discuss and if feel appropriate for school, would call.

8/21 2:15 Dr. Travis PG. PG get brief summary. Dr. T. Said RDH E. Maron had been conferring for evalution of pupil as well as someone from NFI. PG mentioned Dr. Kinklestein. Dr. T. said sounded as though they would be interested in evaluating D (which includes meeting w/whole family). He would get copies

of the reports and after consideration notify TG&PE. If can't reach by phone, would write during week of 8/25 & evaluation would probably be in a few weeks. Confirmed RDH has openings.

8/21, 3:30 p.m. PG Mrs. Maron EM confirmed appt. at 2 on 8/22

8/22, 1:20 p.m. Dr. Travis PG. Meeting set for 9/4 at 9:30 of whole family w/RDH—Dr. Travis. Dan to stay longer to mingle w/class & possibly meet w/ phychiatrist (?or psychologist?)

8/22, 2:00 p.m. Meeting at Board of Education Building: TG, PG, Mrs. Maron, Mrs. Greenfield, & 2 school psychologists (male). See next page for summary.

9/10, 10:45 a.m. Informal chat PG & Mrs. Maron & Mrs. Walker, separately, while Dan being evaluated by Dr. Forman.

Mrs. M. asked how things going at RDH. PG informed OK to Dan's admission by Dr. Travis but more discussion with staff necessary before final answer possibly early week of 8/15. Mrs. M. stated she would call Dr. Travis after Dr. Foreman completed evaluation & then would tell us re classification & IEP.

Summary of meeting with Team 8/22/80 at 2 p.m.

Mrs. Greenfield went over her report of the evaluation done on 8/14/80. Danny has the intellectual ability and is on/above grade level but is highly distractable. He works well on a 1 to 1 basis. Mrs. Deef claimed the problems began at the end of the 2nd grade when he went off the Feingold diet. Dan has good "auditory" perception but poor visual perception & a good memory. She had asked Dan to write something about himself. Dan wrote about the weather. Mrs. Maron mentioned RDH & that Dr. Travis had asked her to mention the appointment available on Sept. 4 in case he couldn't reach PG. In response to question about RDH by TG, Mrs. Maron said that at RDH they keep up the academic skills and have counseling to the whole family (how to deal with and

handle Dan) as well as individual and group psychotherapy for Dan. Until RDH answers Dan would be in "holding pattern" at King School. He would start 3rd grade in Mrs. Spencer's room with (?) help in resource room and/or the emotionally disturbed classroom until he could be placed in RDH if they are willing to take him. If RDH gives negative response, he would attend the E.D. class and/or Resource Room at King. Mrs. Maron stated that if Dan is sent to RDH, School Board would be paying a bill of $7,000 including transportation. *PG raised the question of payment for evaluation at RDH. No one was "aware" that costs were involved & if they were, Major Medical covered the costs to a large extent. Mrs. Maron mentioned a need to explain to State steps prior to sending Dan to Day School & gave an evasive answer to TG question on how they would justify it.* TG mentioned he felt the classification would be "emotionally disturbed." No one disagreed.

9/10, 11:00 Mrs. Walker asked if we received copy of her report & that of Mrs. Greenfield. When told no, she stated we would be given them at the IEP meeting.

9/15, 2:15 p.m. Mrs. Maron PG. asked about medical form. Need it before meeting. Set up meeting at 2:15 9/24/80 at King w/Team. PG would check w/Dr. re form since not returned.

9/19, 9:00 PG Mrs. Maron. PG mentioned brought in Dr.'s report to King. Maron said had it. PG confirmed meeting on 9/24.

9/23, 3:15 Dr. Travis PG. He scheduled PG visit in p.m. on 9/24. PG said would be there 12-1:15 because of scheduled meeting w/Team. Dr. Travis said Dan accepted to RDH, would start 9/30. Vornel (?) would be his teacher & Carol Borowka would work w/family. School (King) knew but Dr. hadn't been able to reach PG. Asked to have medical form in ASAP, preferably by 9/20.

10/27, 1:30 PG. Norm Travis left message to be called back.

10/29, 1:15 Travis PG. PG asked about Rutgers has an IEP in additional to the King IEP. N.T.'s we use the school IEP.

11/19, 11:30 PG Mrs. Maron. Mrs. Maron sick so call transferred to Mr. Gugglienne. PG asked for speech IEP requested by mail 10/28 from Mrs. Maron. Mr. G. said he had posted request to Speech Therapist who would forward it.